Remarks

Reconsideration of the present patent application, as amended, is respectfully requested.

First, the undersigned thanks the Examiner for her courtesy and helpfulness in the telephone conference yesterday with the undersigned.

The specification on pages 3-4 and 12-13 was amended to correct typographical errors in reference numerals and an omitted word respectively.

All claims 1-31 and in particular, claims 1-10 and 24-31, were also rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In response to the rejection and to the suggestions offered by the Examiner at the teleconference, the applicant has amended claims 1-10, 19, 20, 22 and 24-31.

Substantively, of previous pending claims 1-31, all were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication No. 2004/0205239, filed September 26, 2003 by B.T. Doshi *et al.* The applicant respectfully disagree and addresses his arguments with respect to independent claims 1, 11, 19, 24and 28. In rejecting these claims, the Examiner stated:

> For claims 1, 11-12, 19, 24 and 28, Doshi discloses a primary circuit path from the first node to the second node, the primary circuit path includes a first protected link selected from the plurality of elements (paragraphs 13, lines 1-10), the primary circuit path is arranged to include at least one protected link in a protectable segment of the primary circuit path (paragraph 62, lines 1-14)[.]
> An alternate circuit path from the first node to the second node wherein the alternate circuit path protects at least the protectable segment of the primary circuit path (paragraph 46, lines 1-12 and paragraph 62, lines 1-14)[.]

With due respect to the Examiner, the applicant finds nothing in cited portions of the Doshi patent application which anticipates applicant's claims. Independent claim 1 recites:

> A system for computing circuit paths between a first node and a second node within a network, the network including a plurality of elements, the system having at least one computer-readable medium storing computer-executable instructions and comprising:
> a first set of computer-executable instructions creating a primary circuit path from the first node to the second node, the primary circuit path including at

least one protected link selected from the plurality of elements, wherein the first set of computer-executable instructions is arranged to include the at least one protected link in a protectable segment of the primary circuit path; and

a second set of computer-executable instructions creating an alternate circuit path from the first node to the second node, wherein the alternate circuit path is arranged to protect at least the protectable segment of the primary circuit path.

The rejection is flawed on a plurality of points: First, the Examiner purportedly finds the applicant's claim limitation, "the primary circuit path including a first protected link selected from the plurality of elements," in Doshi's specification on paragraph 13, lines 1-10, which states, "In one possible implementation, the shared mesh network includes (a) two or more nodes, (b) two or more optical links interconnecting the nodes, (c) a network manager (either centralized or distributed) adapted to control reservation of protection bandwidth for the links, and (d) components for calculating and updating sharing information. In this implementation, a first link in the network is part of two or more different protection paths, where each protection path corresponds to a different primary path. The...."

The Examiner appears to have confused Doshi's first link with applicant's "at least one protected link." Doshi's link is part of two or more different protection paths which each protection path protects different primary paths. This follows almost by the definition of a protection path. On the other hand, the applicant's "at least one protected link" is part of a "primary circuit path." That is, the applicant's "at least one protected link" is protected without the creation/designation of a protection path for the primary path. The applicant believes the Examiner's mistaken correspondence between Doshi's first link and the applicant's at least one protected link emanates from a confusion which is evident in the point below.

Secondly, the previous claim language, "the primary circuit path is arranged to include at least one protected link in a protectable segment of the primary circuit path," and now reading, "the first set of computer-executable instructions is arranged to include the first protected link in a protectable segment of the primary circuit path," is apparently found in paragraph 62, lines 1-14. The applicant believes that the Examiner is focusing on the language, "As described previously, the primary paths provisioned on the SMDN are assumed to be at least partially disjoint from their respective protection paths. This means that, for at least one link in each primary path, there is a detour segment in the corresponding protection path that has been

designated to carry reserve capacity to protect the primary path." The "at least one link" in quoted portion is to be analogized to applicant's "first protected link." The applicant asserts that the Examiner is confused by the terminology. The link in the Doshi reference becomes a protected link when a protection path is set up for the primary path and the link is protected. See paragraph 55 for Doshi's general description of "strictly disjoint" primary/protection paths and "partially disjoint" primary/protection paths. Note, on the other hand, that in the applicant's claim, the primary path includes the "at least one protected link" before mention of a protection path. In other words, the "at least one protected link" is a protected link independently of the creation of a protection path.

The Examiner is similarly confused in analogizing the applicant's claim language, "an alternate circuit path from the first node to the second node, wherein the alternate circuit path is arranged to protect at least the protectable segment of the primary circuit path," with paragraph 46, lines 1-12 of Doshi. This portion states, "Unless otherwise clear from the context, the process of 'restoration' is synonymous in this specification with the process of 'protection.' In general, such process involves various recovery actions following the detection of a failure, including switching to an alternative (i.e., restoration) path. Depending on the implementation, such process may involve either pre-computation or real-time computation of alternative paths. Pre-computation generally exhibits shorter recovery times but maybe less optimal than real-time computation, which benefits from the ability to take into account the most current state of the network demands and resources." Here, the applicant understands the Examiner to be reasoning, in effect, that if a link in a primary path is eventually protected by protection path, the link must be protected. Again, the applicant points out that his claim has "the at least one protected link" in the primary path before any description of a protection path.

Finally, the applicant points out the language of applicant's claim, "a first set of computer-executable instructions creating a primary circuit path from the first node to the second node, the primary circuit path including at least one protected link... [applicant's underlining]." The portions quoted from Doshi are definitions that when primary and corresponding protection paths are not strictly disjoint, a primary path *could be* partially disjoint from its protection path. See paragraph 55. On the other hand, the applicant's language *requires* that the primary and protection paths be at least partially disjoint, in the terminology of Doshi. The Examiner has not

pointed requirements in the cited portions of the Doshi patent application that the primary path must be at least partially disjoint.

Hence independent claim 1 is not anticipated by the Doshi reference and should be allowed.

Independent claims 11, 19, 24 and 28 were rejected by the same reasoning as claim 1. And likewise, the applicant points out that the same arguments above for allowance apply to these independent claims. Claims 2-10, 12-18, 20-23, 25-27 and 29-31 should also be allowed for at least being dependent upon allowable base claims.

In view of the amendments and remarks above, the applicant believes all claims now pending in this application are in condition for allowance. The applicant respectfully requests that the rejections be withdrawn, that claims 1-31 be allowed and the case be passed to issue. If a telephone conference would expedite prosecution of this application in any way, the Examiner is asked to call the undersigned at (408) 868-4088.

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Respectfully submitted,

Aka Chan LLP

/Gary T. Aka/

Gary T. Aka
Reg. No. 29,038

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Aka Chan LLP
900 Lafayette Street, Suite 710
Santa Clara, CA 95050
Tel: (408) 868-4088
Fax: (408) 608-1599
E-mail: gary@akachanlaw.com